

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 16 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In re: JUNIPER NETWORKS, INC.,

No. 04-15670

JAMES J. ZUMPANO, Esq., on behalf of
himself and all others similarly situated; et
al.,

D.C. No. CV-02-00749-SI

Plaintiffs - Appellants,

MEMORANDUM^{*}

V.

JUNIPER NETWORKS, INC.; et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding

Argued and Submitted December 7, 2005
San Francisco, California

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Before: KOZINSKI and SILVERMAN, Circuit Judges, and BENITEZ **, District Judge.

In this securities fraud class action, plaintiff shareholders appeal the district court's grant of defendants' motion to dismiss the First Amended Complaint ("FAC") under FED. R. CIV. PROC. 12(b)(6) for failure to state a claim. The Private Securities Litigation Reform Act sets forth a heightened pleading standard, which requires plaintiffs to plead specific facts both establishing falsity and giving rise to a strong inference of scienter. 15 U.S.C. § 78u-4(b)(1)(B); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 985 (9th Cir. 1999) (requiring "strong inference" of scienter). Because the FAC fails to do either, we affirm.

Plaintiffs allege that defendants knew at the time they announced the forecast for the second quarter of 2001 ("2Q01") that the forecast was unrealistically optimistic, and that defendants knew there was no way Juniper would be able to achieve its predictions. However, the FAC does not plead specific facts establishing that the forecast was false when made. *See In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 934 (9th Cir. 1996) ("Because Defendants' predictions proved to be wrong in hindsight does not render the statements untrue

** The Honorable Roger Benitez, United States District Judge for the Southern District of California, sitting by designation.

when made.”). In fact, the FAC acknowledges that Juniper lowered its annual forecast for 2001 on the same day it announced the 2Q01 forecast.

Furthermore, the FAC fails to allege specific facts that give rise to a “strong inference” of scienter. The FAC alleges that Juniper experienced a slowdown.

However, allegations that defendants “could regularly track” sales data contradicting the 2Q01 forecast, accompanied by “a general assertion about what [plaintiffs] think the data showed,” is insufficient to plead scienter without “hard

numbers or other specific information.” *Nursing Home Pension Fund, Local 144*

v. Oracle Corp., 380 F.3d 1226, 1231 (9th Cir. 2004); *see also Lipton v.*

Pathogenesis Corp., 284 F.3d 1027, 1035-36 (9th Cir. 2002) (finding general, non-specific allegations of contradictory sales data insufficient to establish scienter).

Similarly, plaintiffs fail to establish that defendants’ alleged stock sales give rise to a strong inference of scienter. While “unusual or suspicious stock sales by corporate insiders may constitute circumstantial evidence of scienter,” *Silicon*

Graphics, 183 F.3d at 986 (internal quotation marks omitted), the FAC fails to

allege either that the stock sold by defendants Kriens, Haley, and Wexler

constituted a significant percentage of their holdings or that such sales were

inconsistent with their prior trading histories. *Cf. Oracle*, 380 F.3d at 1232.

AFFIRMED.

